



Martha S. Hogerty
Public Counsel

State of Missouri

Mel Carnahan
Governor

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Office of the Public Counsel
Harry S Truman Building - Ste. 250
P.O. Box 7800
Jefferson City, Missouri 65102

Telephone: 573-751-4857
Facsimile: 573-751-5562
Relay Missouri
1-800-735-2966 TDD
1-800-735-2466 Voice

January 28, 1997

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20036

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Re: Docket Nos. 96-262, 94-1, 91-213, 96-263

Dear Mr. Caton:

Enclosed for filing before the Federal Communication Commission please find herewith an original and 16 copies of Comments Of The Group Of State Consumer Advocates to be filed in the above consolidated dockets. Also enclosed is a disk containing said Comments pursuant to the Notice requirements. Please file stamp the enclosed extra copy and return in the self addressed stamped envelope.

Very truly yours,

Martha S. Hogerty
Public Counsel, State of Missouri

On Behalf of:
State Consumer Advocates

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	
for Local Exchange Carriers)	CC Docket No. 94-1
)	
Transport Rate Structure)	
and Pricing)	CC Docket No. 91-213
)	
Usage of the Public Switched)	
Network by Information Service)	
and Internet Access Providers)	CC Docket No. 96-263

**COMMENTS OF THE GROUP OF
STATE CONSUMER ADVOCATES**

By their counsel:

MARTHA S. HOGERTY
(Mo. Bar # 30052)
Public Counsel, State of Missouri

On Behalf of:

STATE CONSUMER ADVOCATES

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I. INTRODUCTION

In the debate on access reform, the IXC's and the LEC's have a common interest in reducing the rate they pay for switched access and shifting these costs to the end user. For that reason, the comments of consumer advocates representing the end user should be given equal consideration. A group of state consumer advocates have joined to submit these Comments (State Advocates) herein. Many of these State Advocates were created by state legislatures in order to represent consumers before state and federal regulatory agencies. The consumer advocates filing these Comments are as follows:

California The Utility Reform Network
District of Columbia
Office of the People's Counsel
Florida Office of the Public Counsel
Indiana Office of Utility Consumer
Counselor
Iowa Office of Consumer Advocate
Maryland Office of People's Counsel

Missouri Office of the Public Counsel
New Jersey Division of the Ratepayer
Advocate
Minnesota Office of Attorney General
Pennsylvania Office of Consumer
Advocate
Washington Office of Attorney General
Public Counsel Section

II. SUMMARY OF RECOMMENDATIONS

The heart of the State Advocates' recommendation is to recover the interstate portion of loop costs by a flat rate charge rather than by minutes of use. This flat rate charge should be applied to the IXC's and not automatically applied to the end user. IXC's can then make

a determination based upon the competitive market whether to recover that charge through their rates.

The foundation of this access reform lies with the fundamental fact that interstate switched access service share common line facilities and, therefore, it should support a reasonable portion of the costs of those facilities. These rates should be set to recover a reasonable portion of the local exchange carriers' (LECs) joint and common costs.

State Advocates recommend an economic price for access. The economic price for a service does not equal long run incremental cost (LRIC). The economic price of a service is within a range with the incremental cost as the floor and the stand alone cost as the ceiling. The Commission should reject the industry double standard which claims that local exchange rates are too low because they are priced below the stand alone ceiling costs, while access rates are too high because they are priced above their incremental floor cost. Reasonable prices are generally below the "ceiling" and above the "floor." The FCC should use a consistent cost standard among services.

Access payments do not subsidize universal service. A payment by the interexchange carriers (IXCs) towards a portion of the cost of the common line is not a subsidy to universal service, but rather is a payment towards the cost of the facilities that the IXCs are sharing.

The subscriber line charges (SLCs) for multi-line businesses and for additional residential lines should not be set to recover 100% of the interstate common line costs of those lines. Whether the common line costs are traffic sensitive or non-traffic sensitive (NTS) is not truly relevant. The issue is to have all that share these facilities share the cost. Also, the number

of common lines to a premise is usually adjusted based on the traffic volumes, particularly for multi-line locations. Therefore, the common line costs clearly depend upon the level of traffic, including interstate access traffic.

The amount of the interstate common line costs should be billed to the IXC's in the form of a fixed monthly fee. The amount that should be recovered by the IXC's from the end user, if at all, should be determined by the competitive market. The interstate common line cost should be billed to the IXC's. Competition between the IXC's should be allowed to determine in what form those costs are billed through to the end users. The FCC does not need to prescribe the billing form this recovery will take because the FCC has determined that the interexchange market is competitive.

The State Advocates suggest that the FCC clarify its interpretation of how the costs of the unbundled rate elements would be separated between the jurisdictions in conformance with Part 36 of the FCC rules. The State Advocates recommend that the costs of the unbundled loops that are used for both state and interstate services should be separated consistent with the separations procedures that applied to the LEC's common lines. The competitive local exchange carrier (CLEC) who is paying the unbundled loop rate should retain any switched access revenues paid by others to utilize that unbundled loop.

The State Advocates also suggest the FCC require LEC's to book the revenues by jurisdiction for those unbundled rate elements which are used for both intrastate and interstate services, but for which there is only one rate.

The State Advocates do not have a strong preference as to how the interstate common line costs are spread among the IXC's. The Joint Board recommended the PIC as a

reasonable method. Assigning one-half of the interstate common line costs to IXC's based upon the PICs, and assigning the other half of those costs among the IXC's based upon each IXC's percent of the total IXC's minutes of use of the common line is a reasonable method. The IXC's could negotiate among themselves to apportion these costs among the IXC's.

The availability of the unbundled loops will not constrain switched access service rates. At best, it might constrain only the total rate for the package of jointly provided services.

The switched access rates charged by the LECs have little to do with how competitive the LECs are for high volume locations. The LECs primarily use their special access rates to compete for high volume locations.

The State Advocates do not recommend geographical deaveraging of access charges, because that will adversely affect rural areas. There are a number of state and federal tariffs and programs which already help to offset at least a portion of the difference in costs of serving different geographical areas. Geographic averaging of SLC is not an implicit support to universal service in violation of Section 254(e).

Section 254(g) does not prohibit IXC's from charging customers a flat monthly charge. However, those charges could not be higher in rural and high cost areas than in urban areas, nor higher in one state than in another. The FCC should not forebear application of Section 254(g) requirement that IXC rates be no higher in certain geographic areas than in others in order to accommodate possible variations in the flat rate carrier common line charges (CCLCs) to the IXC's. Congress approved the uniformity requirement in Section 254(g), although the existing access charges are not uniform nationwide.

Charging a different number of SLCs for similar capacity, based upon the technology used to provide that capacity, is discriminatory, technology dependent, and discourages the adoption of more efficient technologies and services. Basing the number of SLCs on the number of copper pairs used is unworkable, because in some locations copper pairs are not used at all.

There is no depreciation "reserve deficiency." The depreciation reserves are at historically high levels and rapidly growing. No additional amortization should be approved.

The price cap index (PCIs) of the LECs should be reinitialized to include depreciation rates that are designed to maintain the current depreciation reserve relationship and growth to investment. The depreciation expense incorporated in the original PCIs have resulted in the depreciation reserve growing faster than investment.

The jurisdictional separations procedures are not biased in favor of the intrastate jurisdiction. The current procedures appear to allocate a disproportionate share of the costs to the intrastate jurisdiction.

III. COSTING PRINCIPLES

In the Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry (hereinafter referred to as "Notice"), the FCC proposes changes in the way access costs are recovered. The FCC is once again, in large part, wrestling with the age old problem of how to recover the joint and common costs of the telephone network.¹ As the FCC has observed,

¹In these comments, we will use the cost terms "joint", "shared", "common", and "joint and common" effectively as interchangeable, although we do recognize some parties make fine distinctions among these terms. When we use these terms, we are referring to the same definition that the Commission used for "common" costs in ¶221 of the Notice.

For example, interstate access is typically provided using the same loops and line cards that are used to provide local service. The costs of these elements are, therefore, common to the provision of both local and long-distance services. (§ 237, Notice)²

State Advocates contend that access should continue to support some portion of the costs of the common line. Recovery of the joint and common costs is particularly important in telecommunications, because these costs can represent a large part, or even the majority, of the costs of a telephone network. It is not unusual for the common line investment of a LEC to be near 40% of that LEC's total regulated investment.³ When all costs are included, it is clear that joint and common costs represent a large portion, or even the majority, of a telephone company's total costs. The direct or incremental costs of a service (the long run incremental cost (LRIC) or the total service long run incremental costs (TSLRIC)), are only a small portion of the costs that should be recovered through a reasonable rate for that service. A reasonable rate based upon cost recovery must also recover a reasonable portion of the joint and common costs. The portion that should be recovered from each of the benefitted services is subject to debate.

In the past, customers of any one service that share joint or common facilities have argued that they should pay little or none of the joint and common costs. They argue that these costs would be incurred even if their service were no longer produced. If any one service is exempted from paying any portion, or a reasonable portion, of the joint and common costs of the

²Throughout the remaining portion of these Comments, State Advocates will simply refer to paragraphs of the Notice by citing the applicable paragraph without further reference to the Notice.

³Cable and Wire Facilities SubCategory 1.3 (common line) investment + common line portion of Central Office Equipment (COE) Category 4.13 (Exchange Line Circuit Equipment Excluding Wideband).

facilities, it places an undue burden on the customers of other services that share those same facilities.

As present or future customers of switched access,⁴ the IXC's and the LEC's have argued to have switched access carry little or none of the major joint and common costs of the LEC's. If accepted, this would require customers of the other services that share those facilities to carry more than their equitable share of these joint and common costs.

Many of the present or future switched access customers, including some IXC's and LEC's, argue that setting the access charge above the incremental cost would result in uneconomic bypass, put them at a competitive disadvantage, keep "long distance rates higher than they otherwise would be," and be inefficient.

There are numerous problems with these arguments. These exact arguments can be made for any of the other services that shares the joint and common costs. For example, requiring basic local exchange service to recover a portion of the joint and common costs makes local rates higher than they otherwise would be.

The goal set forth by the FCC in its Notice is to establish an access charge rate structure similar to that a competitive market for access services would produce. (¶ 13) Prices in competitive markets recover joint and common costs. Requiring the price of a service to cover a portion of the joint and common costs of shared facilities does not put it at a competitive disadvantage, because competitors (if any) also must cover those costs.

⁴This includes the interexchange carriers (IXC's) and the LEC's.

In a truly competitive market, prices are not set without considering how the firm will recover its joint and common costs. If that occurred, the firms would go bankrupt. For example, if a fast food restaurant sells both hamburgers and roast beef, the mortgage payment for the lot on which that restaurant sits is not part of the LRIC or TSLRIC of either the hamburgers or roast beef. However, the prices for those products must be set so that the mortgage payment will be covered or else the restaurant would go out of business.

Pricing switched access service without including a reasonable share of the joint and common costs shared by that service would improperly discourage efficient firms from entering the switched access market. Competition is supposed to drive down prices by encouraging efficiencies. However, if the LECs are allowed to reduce their prices by shifting their joint and common costs to services where they have greater monopoly power, that would not force them to reduce their joint and common costs. Instead, they could underprice even a more efficient firm in a competitive market simply by shifting their joint and common costs to their more monopolistic services.

The FCC in this Notice has properly stated,

Under both TSLRIC and TELRIC-based pricing methodologies, prices should be based on forward-looking economic costs, including a reasonable allocation of forward-looking joint and common costs, and allow incumbent LECs to earn a fair, risk-adjusted rate of return on their investments. (¶222)

State Advocates agree with the FCC comments in ¶221 of its Notice which recognize that the common network facilities costs to be recovered in access may be significant:

We note that when calculating forward-looking economic cost of exchange access services, because these services share common network facilities with other incumbent LEC-provided services, such as local exchange service and intraLATA toll, fewer costs will be directly attributable or dedicated totally to exchange access services. Consequently, the incumbent LEC may need to recover significant

common costs in addition to the TSLRIC of exchange access. These common costs should be recovered in a manner that is economically efficient and consistent with the pro-competitive goals of the 1996 Act. (¶221)

Many of the claims of the IXC's, and even the LEC's, in the Notice are contrary to the economic and pricing principles as properly reflected in the above-quoted statements of the FCC. The claim that recovering a portion of the joint and common costs through switched access rates is inefficient is incorrect. If no such cost sharing occurred, there would be no incentive to share these facilities and interstate and intrastate services would be provided over totally separate facilities.

A. Economic Costs

The IXC's, including AT&T, argue that access services should be available to the IXC's at forwarding looking costs. (¶47) AT&T has made it clear in other proceedings that for access services, they consider the forward looking economic costs as the incremental costs of access service.⁵ Economic pricing does not require pricing services at the incremental cost⁶. A price is economic if it is anywhere between the stand alone and incremental costs, as the FCC has previously correctly stated in its Notice of Proposed Rulemaking, CC Docket No. 96-112.⁷

⁵U S West Communications, Inc., Iowa Docket No. RPU-95-11, Direct testimony of Dr. David L. Kaserman testifying on behalf of AT&T Communications, at page 26, lines 18-19.

⁶Frequently, pricing access service by excluding all joint and common costs of the network required to provide that service may be confused with calculating network costs on a forward-looking and efficient basis. As argued above, State Advocates wish to make clear that access service should not be priced at the incremental cost of that service. However, State Advocates do not reject pricing network facilities on a forward-looking basis which excludes uneconomic network costs.

⁷Technically, it would also be economical if it was equal to either the incremental or the stand alone cost.

Economists have addressed these issues by defining the terms incremental and stand-alone costs. Economists would say that in order to give incumbent local exchange carriers the proper incentives to build multi-service facilities, where such facilities are economically rational, cost allocated to each individual service or subset of services should be less than the stand-alone cost but greater than the incremental cost. Stand-alone costs represent the total cost of constructing facilities dedicated to a specific group of services, while incremental costs represents the additional cost that must be incurred in order to provide a group of services where facilities are in place to provide other services. (citation omitted) These are the upper and lower bounds within which costs allocated to regulated and nonregulated services should fall.⁸

The incremental cost is just one of the economic costs. It is the one that sets the lower boundary of where reasonable prices should fall. The other economic cost is the stand alone cost which sets the upper boundary of where reasonable prices should fall, all as discussed in the above-referenced FCC Notice in Docket No. 96-112.

If the IXCs were not allowed to share the common line facility that also provides intrastate services, but instead were required to build their own separate "interstate only" loop, it would be very clear that the cost of the "interstate" loop would be part of the cost of interstate service. However, for most locations, it is more efficient to have the same loop facility shared by both intrastate and interstate services. The fact that the interstate services are sharing a facility with intrastate services does not relieve the interstate services of supporting any portion of the cost of those shared facilities.

There is no way to determine how far above the incremental cost a reasonable price can be without also knowing the stand alone cost. For a service which has significant joint

⁸Pages 10 and 11, Notice of Proposed Rulemaking, CC Docket No. 96-112, adopted and released May 10, 1996.

and common costs, but has very little incremental costs, the reasonable price could be many times the incremental costs. AT&T's claim that the interstate switched access rates are several times higher than their forward looking incremental costs (§11), even if true, would not in any way indicate that the switched access rates are excessive. Residential basic exchange service rates are also several times their forward-looking incremental cost when the incremental costs are properly calculated to exclude the joint and common costs. The Washington Commission found:

"If USWC were to exit the local residential exchange market, its revenues would decrease by about \$14 per customer, and its costs would decrease by about \$4.42 per customer."⁹

Residential basic exchange service rates are generally set several times above that service's incremental cost, primarily to support a portion of the joint and common costs, such as the common line cost, that local exchange service shares with other services.

Some IXC's and LEC's claim that revenues recovered through interstate switched access rates exceed their cost, while the intrastate exchange and exchange access services do not recover their economic costs. This is a false claim based upon a double standard measure of "economic costs." In reviewing numerous, similar claims made by the industry, switched access "economic cost" is a form of incremental cost. Incremental cost properly excludes the major joint cost, the cost of the common line. However, these same companies place the entire cost of the common line in the so-called "economic cost" of local exchange service. This is improper since joint costs are properly excluded from the incremental cost. The use of such a double standard

⁹Page 90, Fifteenth Supplemental Order, Docket No. UT-950200 before the Washington Utilities and Transportation Commission, Commission Decision and Order Rejecting Tariff Revisions; Requiring Refiling, dated April 11, 1996.

produces a meaningless conclusion. When the common line facility is shared by many services, there is no valid reason to assign all that line cost to any one particular services that it supports.

State Advocates urge the FCC to carefully consider what percent of the common line cost is included in any cost figure used for any of these services. For switched access, toll and local services, the key cost determinant is the treatment of the common line costs. If 100% of the common line costs are included in that economic cost, then the common line is being treated as it would be treated in a stand alone study. It would be reasonable for the proper price to be below that stand alone cost figure. If all of the common costs are excluded, then the common line cost is being treated as it would in an incremental cost study, and it would be reasonable for the price to be above that cost figure.¹⁰

B. IXC Payment Of A Carrier Common Line Charge (CCLC) Is Not Support Of Universal Service.

AT&T claims that the CCLC the IXCs pay in order to share the common line facilities is in support of universal service.¹¹ It is not. The CCLC payment by the IXCs is a payment to support a portion of the costs of the network facilities used. Those interexchange services share, use, benefit from, and depend upon the shared portions of that network.

To consider CCLC as "universal service support" would allow local exchange services' payment towards common line costs as "support of the IXCs' services." In the Universal

¹⁰For a complete analysis, the treatment of other costs should also be considered, but the loop cost is by far the largest joint and common cost.

¹¹AT&T asserts that universal service support equals \$4.0 billion. ¶247. This paragraph does not specifically indicate the source of the \$4 billion AT&T claims is in support of universal service. However, it is clear from Table 1 in ¶29 of the Notice that the \$4 billion figure appears to be the CCLC revenues.

Service Joint Board proceeding, the FCC asked the Joint Board to identify implicit supports to universal service. The Joint Board did not identify the CCLC as being an implicit support to universal service. (§38) The IXCs could stop paying the CCLC today if they stopped sharing the common lines.

It is very clear from the 1996 Act that a reasonable allocation of the joint and common costs of the shared facilities must be made when rates are set for universal service.

(k) SUBSIDY OF COMPETITIVE SERVICES PROHIBITED.--

A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition.

The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocation rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services.

(Section 254(k), Federal Telecommunications Act of 1996 (emphasis added))

The above referenced portion of the Federal Telecommunications Act of 1996 specifically addresses the issue of joint and common costs of facilities used to provide services. This same principle should be applied to all other services that use the common line.¹²

¹²The FCC should be aware that it is not the only agency that must wrestle with this issue of recovering the joint and common costs. For example, a defense contractor might produce both military and civilian products in the same factory. A reasonable allocation of the joint and common costs is required. The Federal Cost Accounting Standards are the standards produced by the Cost Accounting Standards Board, which establishes rules which must be used to allocate costs for such military projects. It would be no more appropriate for switched access services to share the common line facilities, while paying no portion of those costs, than it would for a defense contractor to manufacture both military and civilian airplanes in factory, while placing all of the cost of the shared plant parking lot on the military products, and none on the commercial products.

C. Cost Shifting And Package Price of Joint Service

The Notice states that inefficient entry may occur if the price for a "package" of jointly provided services was above economic cost. Conversely, if a package of jointly provided services, including access, is priced too low, that could improperly preclude entry by an efficient supplier. (¶42)

Many of the solutions proposed in the Notice would not correct these "package" issues. Shifting joint and common costs between access and other services would not necessarily change the total "package" price.

IV. ACCESS REFORM FOR INCUMBENT LECS

In ¶ 54, the FCC tentatively concludes that the unbundled network elements should be excluded from the Part 69 access charge regime, regardless of whether the carrier uses those unbundled network elements to originate and terminate interstate calls, and also to provide local exchange services. In ¶ 229, the FCC's statement appears to indicate some confusion as to whether or not the unbundled network element costs will be separated.

The FCC should clarify how the elements should be separated. State Advocates recognize the dual jurisdictions, therefore, revenues should be divided as they are now. Costs and revenues should be continued to be separated by jurisdiction.

State Advocates submit that the unbundled network elements used to carry both interstate and intrastate services must be jurisdictionally separated. State Advocates request clarification that, if a carrier obtains an unbundled loop, and uses that loop to provide both local exchange service and exchange access services (which include the origination and termination of

interstate calls), then the costs of that unbundled facility must be jurisdictionally separated. The cost of the unbundled loops that are used for both state and interstate services must be separated between the jurisdictions. Decades ago, the Supreme Court in Smith vs. Illinois Bell Telephone specifically examined the separations treatment for what we now call the “loop.” At that time, Illinois Bell Telephone had been assigning all of those loop costs to the intrastate jurisdiction, even though the loop was connected to the switched network and was used for both state and interstate purposes. The Court found that allocating all of that cost to the intrastate jurisdiction was incorrect because it failed to recognize the “actual uses to which the property is put.” The Court said some reasonable “apportionment” was required. The fact that the same loop connected to the switched network will now be called “unbundled” loop does not change this requirement for jurisdictional separations. The cost of a loop connected to the switched network and used for both intrastate and interstate services must be separated between the jurisdictions.

V. RATE STRUCTURE

A. Common Line

In ¶ 57 through ¶ 67, the FCC discusses alternatives for recovering the interstate portion of the common line costs. The Joint Board has recommended that the current per minute CCLC charge to the IXC be replaced by a flat rate per line CCLC to the IXC. (¶60) The State Advocates support this recommendation as a reasonable way to recover the IXCs' share of the cost of the common lines.

In ¶65 of the Notice, the FCC proposes to increase the cap on the SLC for non-primary residential lines and multi-line business lines to the per line loop cost assigned to the

interstate jurisdiction. The purpose is to allow the LECs to recover the interstate common line costs for these connections "in a manner consistent with the way costs are incurred."

However, this claim that an end user charge reflects "the way costs are incurred" does not recognize that common line costs are incurred to provide a package of services, not just end user or local services. Interstate terminating exchange access is a service provided to the IXC that utilizes the common line. The services that use the common line should all contribute to the costs of that line. Common line costs provide toll terminating and originating access service to the IXC would still exist even if local exchange service or other services were deleted on the common lines.

The claims about cost recovery in ¶65 of the Notice are inconsistent with the proper economic principles that the FCC set forth in Paragraphs 221 and 237 of the Notice. In ¶237, the FCC correctly stated that the common line costs are "common" costs:

"The costs of these elements are, therefore, common to the provision of both local and long-distance services.

Regarding the exchange access service provided to the carrier, the FCC properly stated that because these services share common network facilities with other services,

Consequently, the incumbent LEC may need to recover significant common costs in addition to the TSLRIC of exchange access.
(¶ 221)

However, under the proposal set forth in ¶65, multi-line local exchange services would effectively be supporting all of the interstate common line costs, and the IXCs would be effectively supporting none of the interstate common line costs, although the common line is a facility shared by these and other services. This would result in a "free ride" by the IXCs on the

common line facilities. This would be contrary to the relevant economic and regulatory standards, including those spelled out in ¶ 221 and ¶ 237 of the Notice.

Current events clearly demonstrate that the loop costs are not incurred just to provide service to the end users. For example, carriers, not end users, are the customer class who are subscribing to unbundled loops so that those carriers can carry traffic to and from various premises. This proposal would not recover costs consistent with the manner in which these costs are incurred.

Access services should support a portion of the loop costs, even assuming that the loop costs are NTS. All of the costs incurred to provide a service must be recovered, regardless of whether those costs are traffic sensitive or NTS.

However, an additional problem arises when loading all of the interstate common line costs on the end user. The level of traffic, including interstate switched access traffic, affects the amount of the common line costs. Common line costs should be characterized as "lumpy" traffic sensitive costs. The common line costs are normally referred to as being non-traffic sensitive (NTS), but that is an over-simplification.

Common line costs vary with the level of traffic. If there is no desire to have any incoming or outgoing telephone traffic, no loops will be needed, and the loop costs would be zero. However, to connect a small amount of traffic one loop is required, with the costs of one loop. At higher levels of traffic, one loop becomes increasingly congested and a second loop is needed to properly handle it. At still higher levels of traffic, three loops, four loops, or more are required, together with the associated costs. Therefore, the loop cost clearly does vary with the level of traffic, but in a "lumpy" manner. The loop costs are a "lumpy" traffic sensitive cost.

Interstate access traffic makes up 15% of the traffic on the common lines. Therefore, this interstate traffic clearly helps cause the costs incurred to provide additional common lines.

If all telephone customers had only one loop, the difference between whether the loop costs were "lumpy" traffic sensitive costs or NTS might only be theoretical. However, a growing number of customers do actually have more than one loop.

Currently, approximately 90%¹³ of all business lines served by major regional Bell operating companies (RBOCs) are multi-line business lines, whereas approximately ten percent of the business lines are single business lines. Therefore, the vast majority of the business lines are at locations where the traffic levels require additional loop investments in order to serve that level of traffic. Therefore, the multi-line loop cost depends on the level of traffic.

In the past, few residential customers had more than one line so the distinction between a "lumpy" traffic sensitive cost and NTS had little significance for residential service. But the number of residential customers with additional lines is growing rapidly. In 1995, Bell Atlantic's sale of secondary residential lines increased more than 50%.¹⁴ By 2000, the industry estimates over 50% of residential customers will have two or more lines.¹⁵

¹³ARMIS Report 43-01, Table II, 1995. Business multi-line quantity divided by the total of business multi-line business plus business single line.

¹⁴Speech of Raymond W. Smith, Chairman and Chief Executive Office of Bell Atlantic delivered to Merrill Lynch Telecommunications CEO conference, New York, March 19, 1996.

¹⁵Two independent sources: (1) GTE 1995 Annual Report, page 9. (2) "Number of 2nd home phone lines explodes", Page 21, State Journal-Register, December 20, 1995.

Some technologies "concentrate" traffic such that capacity can be temporarily utilized by traffic going to or from one premise, and at another time that same capacity can be utilized by traffic going to or from another premise.

Some loop costs, particularly at multi-line locations, are traffic sensitive. Many LECs' tariffs contain a requirement that a PBX customer add additional loops if the current number of loops are not sufficient to properly handle the traffic incoming from the network. In such an instance, the number of loops and, therefore, those loop costs are clearly related to the level of traffic, including access traffic.

PBX customers routinely perform formal studies of the traffic over the loops and adjust the number of loops to the quantity appropriate to that traffic. Other multi-line and single line customers may not perform formal studies, but the number of loops to their premises are also traffic determined. For example, if customers are getting frequent busy signals when trying to call a small business, and/or that small business' employees are having trouble calling out because of an insufficient number of lines for that level of traffic, the small business may reasonably add additional lines in order to handle the higher level of traffic. Similar concepts apply to residential customers as well.

Part of the traffic on the common lines is the traffic placed there by the IXCs' switched access services. Therefore, the IXCs' traffic is part of the traffic that is causing the need for a higher number of loops and higher loop costs, particularly at multi-line locations.

Under the proposal to increase the business multi-line and additional residential line SLC to cover the full interstate cost of the common line, presumably there would be no charge to the IXCs for those common lines, even though the IXCs' exchange access service shares

these common line facilities. This amounts to a "free ride" for the IXCs' on the common line facilities. Of course, the IXCs' "free ride" would be at the expense of the end users. Although the IXCs use these common lines to originate and terminate the long distance services they sell, IXCs would pay nothing for these facilities and the end users would pay the full cost.

State Advocates are pleased that the FCC seems inclined to accept the Joint Board Recommended Decision to reduce the SLC to the initial Residence line in the primary residence and the single line Business customer.¹⁶ However, State Advocates oppose the improper over-burdening of local exchange service, even if it will not affect first residential line and single line business customers, i.e. the Universal Service category. Recovering all of the costs of the shared common line from one group of end users, while another group of customers, the IXCs, shares the use of that facility at no cost, is simply wrong and is not consistent with pricing in an open, competitive market. In the open market, it would be rare for the customer of a service to be forced to bear 100% of the costs of a facility used in common to provide more than one service. Such an abnormal cost allocation can result only from the use of monopoly power. Such a result moves away from the result that would occur in a truly open, market-based pricing structure.

Later in ¶65, the FCC proposes an alternative in which it would eliminate the cap for multi-line business customers and for residential connections beyond the primary connection. Recovery from the multi-line business customers and residential additional connections would not be limited to 100% of the interstate common line costs, but could exceed 100% of the costs. This proposal has all of the problems of the business multi-line and additional residential SLC proposal,

¹⁶The amount would be adjusted based upon the adjustments to remove payphone and long term support.

and then some.¹⁷ This proposal is essentially equivalent to a proposal to uncap the local exchange rates for these services, since customers must pay the SLC in order to obtain local exchange services. While the FCC suggests that such deregulation of these SLCs may be appropriate if the LEC is allowing for competition through interconnection agreements, the offering of interconnection does not mean that full, vigorous competition by numerous non-colluding facility-based competitors exists at all locations. The proposal for what is virtually an unlimited local exchange rate for these customers should not be adopted, because it is contrary to the public interest.

Reasons presented for this proposed change in the SLC cap do not withstand reasonable examination. One reason offered is that the recovery of a portion of the common line costs through charges to the IXC results in toll rates being higher than they otherwise would be. (¶64) The converse, of course, is true for any other service to which the costs are shifted. Increasing the SLC, which is a charge that customers must pay in order to obtain intrastate local exchange service, would result in intrastate local exchange service being more expensive than it otherwise would be when costs are shifted to that service.

The Notice states that multi-line business and multi-line residential users "do not necessarily" make a large number of toll calls, and that the toll payments of these end users "may not cover the portion of the loop costs not recovered through the SLC." This is speculation. No evidence is presented that multi-line business and multi-line residential services make fewer than

¹⁷In ¶66, the FCC asks if a transition mechanism is needed if the FCC increases or eliminates the caps on the CCLC for the multi-line business lines and residential additional lines. We will not address this issue since we feel the cap on the CCLC should not be increased or eliminated, as discussed above.

the average number of toll calls. In addition, to determine true contribution from access, it would be necessary to know both the originating and terminating uses of these lines; that information is not presented. The FCC should not make such a major decision based upon this speculation in the Notice. Furthermore, it is not necessary for these customers to make a "large number" of toll calls, but instead simply to make and receive an average number of toll minutes. No evidence has been provided to demonstrate that multi-line customers are not doing that. In fact, residential multi-line customers tend to be the more affluent customers. More affluent residential customers tend to place more toll calls than do less affluent residential customers,¹⁸ contrary to what this Notice says "may" be the case.

Several possible methods to recover the common line costs are proposed in the Notice, but the State Advocates offer alternative methods. The Commission raised key issues pertaining to what portion of the interstate common line costs should be recovered from the IXC's and what portion from the end users through the SLC. (pp. 62, 63, 65, and 215) Several of the possible methods proposed in the Notice include:

1. The Joint Board has recommended that incumbent LECs be allowed to recover the interstate common line costs that are not recovered from the SLC through a flat, per line charge paid by the IXC's. The first residential and single line business SLCs would be limited to \$3.50, or a lower number under certain conditions. (¶ 64)

2. The SLC for multi-line business and additional residential lines would be set to recover the full interstate common line costs. The first residential line and single line business

¹⁸Page 17, Joint Telecommunications Project, conducted by the Consumer Federation of America, American Association of Retired Persons (AARP), and AT&T, dated February 12, 1987.